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June 14, 2011

VIA ECFS AND E-MAIL

Ms. Sharon E. Gillett
Bureau Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Kristin Brooks Hope Center Response to SAMHSA "Supplemental
Comments"
WC Docket 07-271, CC Docket 95-155

Dear Ms. Gillett:

In December, the U.S. Court of Appeals for the D.C. Circuit remanded the Commission's decision in the *800 SUICIDE Reassignment Order*¹ for failure to provide a reasoned explanation of the Commission's decision.² Concerning the FCC's central premise that it needed to avoid a potential public safety crisis in the future, the Court cautioned that "fear may have supplanted reason" in the FCC's analysis.

Now, after a full remand proceeding, SAMHSA plays the fear card once again to overcome a record that indisputably shows that KBHC is entitled to return of the toll-free numbers unlawfully reassigned from it. SAMHSA's 11th-hour filing is a rehash of rejected arguments and unfounded accusations that add up to a dangerous distraction for the

¹ *U.S. Department of Health & Human Services Substance Abuse and Mental Health Services Administration's Petition for the Permanent Reassignment of Three Toll-Free Suicide Prevention Numbers*, Memorandum Opinion and Order and Order on Review, 24 FCC Rcd 13022 (2009) ("800-SUICIDE Reassignment Order").

² *Kristin Brooks Hope Center v. FCC*, 626 F.3d 586 (D.C. Cir. 2010).

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Commission.³ If the Commission were to listen to SAMHSA's fear-mongering, it would open itself to a second reversal from the Court of Appeals.

SAMHSA's letter reads like a replay of the *Kristin Brooks Hope Center* decision:

Reliance on Mental Health Services Unrelated to Operation of the Hotlines.

In *Kristin Brooks Hope Center*, the court criticized the FCC for giving "considerable weight to SAMHSA's provision of 'training, information, stipends, and additional research funding to assist the crisis centers.'" Yet, SAMHSA repeats the error, relying on assertions of harm based on these very same non-hotline activities:

- Lauren Balch (p. 10). Ms. Balch's statement that the system prior to the 800-SUICIDE Reassignment Order was "detrimental" is supported by the claim that, "[The National Suicide Prevention Lifeline] has been instrumental in providing a clinical standard for all of the accredited member agencies ... and its reporting practices, financial support, clinical updates, and research have represented a huge improvement."⁴
- Heidi Bryan (p. 11). Ms. Bryan's endorsement of SAMHSA's "standards of care and qualified staff" is based on "a unified structure of training standards and reporting methods" and on "technical and financial support [that is offered] to centers at a time when calls are increasing and budgets are reducing."⁵
- Judi Hampshire (p. 10). Ms. Hampshire's comparisons of the work of SAMHSA and KBHC rely significantly on her claim that, "SAMHSA has sought to build relationships with crisis centers, seeking active involvement and input from crisis centers. Active agreements, modest compensation and a national and regional back-up system have been created ..."⁶
- Brian Yost (p. 10). Mr. Yost lauds the NSPL's "complete system" and states, "I do not believe that the same level of service currently provided by the NSPL could be maintained by the HOPE Center."⁷

³ See Letter from Rina Hakimian, Department of Health and Human Services, to Marlene H. Dortch, FCC, Docket No. 07-271 (June 7, 2011) ("SAMHSA letter").

⁴ Lauren Balch, WC Docket 07-271 (February 2, 2011) (emphasis added).

⁵ Heidi Bryan, WC Docket 07-271 (February 17, 2011) (emphasis added).

⁶ Judi Hampshire, WC Docket 07-271 (February 7, 2011).

⁷ Brian Yost, WC Docket 07-271 (February 9, 2011) (emphasis added).

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None of these assertions, even if true, would justify assignment of the toll-free numbers to SAMHSA. SAMHSA can readily provide these support and training services to crisis centers if KBHC ran the hotlines. *Kristin Brooks Hope Center*, 626 F.3d at 590. In fact, it bears repeating that neither SAMHSA nor KBHC provide the crisis response on the hotlines.⁸ Moreover, in response to KBHC's questions, SAMHSA readily admitted that it does not need to be the subscriber of record for the toll free numbers in order to provide support for hotlines or for the crisis centers.⁹

How SAMHSA chooses to provide this support is not of concern to the Commission. Even *whether* SAMHSA provides this support is irrelevant. If SAMHSA believes that 800-SUICIDE and KBHC's other suicide prevention hotlines promote the safety of life, it may choose among many alternatives within its discretionary powers to support the hotlines. If, on the other hand, SAMHSA believes that life and safety are better protected if it chooses not to provide support to KBHC, SAMHSA may make that choice. However, it cannot come to the FCC seeking extraordinary relief when it chooses not to use the powers within its own authority.

Reliance on a Partnership with the VA to Provide Veteran's Crisis Services

In *Kristin Brooks Hope Center*, the court dismissed the FCC's reliance on the SAMHSA partnership with the Department of Veterans Affairs, concluding that this arrangement "seems easily divisible from running the hotlines." *Kristin Brooks Hope Center*, 626 F.3d at 590. Despite this, the SAMHSA letter claims that it "has expanded the scope and depth of the service offered to the public" by partnering with the VA (p. 12). SAMHSA does not even acknowledge the court's opinion when it invites the FCC to tread down the same unlawful path a second time. Moreover, SAMHSA fails to acknowledge that KBHC again stands willing and eager to work with the VA to provide this same service.¹⁰

Reliance on Past Financial Difficulties without Consideration of the Circumstances Under Which They Arose

In *Kristin Brooks Hope Center*, the court found "the Commission's extrapolation from the Center's past financial difficulties [to be] quite a leap." *Kristin Brooks Hope Center*,

⁸ SAMHSA Remand Comments at 4; *see* KBHC Remand Reply Comments at 3.

⁹ SAMHSA Remand Comments at 5; *see* KBHC Remand Reply Comments at 5.

¹⁰ KBHC May 10, 2011 *ex parte* letter, at 2-3 (pledging KBHC's "best efforts" to enter into an agreement with the VA to provide the same service); *see Kristin Brooks Hope Center*, 626 F.3d at 590 (noting that KBHC was "willing and eager to work with the VA" to provide this service).

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626 F.3d at 589. Despite this, SAMHSA repeatedly and unapologetically asks the FCC to find a risk to public safety due to those past financial difficulties:

- SAMHSA letter at 4: “Not only did KBHC’s actions in failing to pay for telephone carrier service prior to the reassignment of the number in 2007 cause the destabilization of the hotlines and imminent threat to cut off these vital services to the public ...”
- SAMHSA letter at 4: KBHC lacks the resources to operate the hotlines “as demonstrated in their [sic] prior failures to pay for telephone services ...”
- SAMHSA letter at 13: “KBHC’s actions and financial instability prior to the FCC’s 2007 temporary reassignment ...” show that KBHC cannot be relied upon to operate the hotlines.

Further, SAMHSA invites the Commission to rely upon individual commenters who repeat the same mistake:

- Brian Yost (p. 10-11): “[G]iven the current economic conditions, [KBHC financial difficulty] is a very real concern ...”

KBHC repeatedly demonstrated that it has successfully transitioned to multiple and reliable sources of private funding.¹¹ Through private grants, individual donations, various outreach and fundraising events and other sources, KBHC’s finances are consistent and stable. SAMHSA has not challenged KBHC’s current finances, and its reliance on past finances is both irrelevant and improper.

To repeat, there is *no evidence* in this record of present financial difficulties involving KBHC, of a present emergency situation or of a present risk of disconnection of any of KBHC’s hotlines. The Commission has no factual basis whatsoever to conclude that any emergency exists that threatens the operation of the toll-free numbers in question.

If the Commission were to take SAMHSA’s suggestions, it would cause the Commission to repeat the path that led to the remand in the first place. A Commission order assigning the numbers to SAMHSA would be based on exactly the same reasoning and suffer from exactly the same flaws as found by the D.C. Circuit in the *Kristin Brooks Hope Center* decision. Those portions of SAMHSA’s letter asking the Commission to repeat its mistake should be rejected summarily.

¹¹ See KBHC Remand Comments at 10-12; KBHC Remand Reply Comments at 9-11.

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In addition to inviting the Commission to repeat the same mistakes that led to the *Kristin Brooks Hope Center* remand, SAMHSA seeks to incite fear by trotting out unfounded and irrelevant accusations concerning KBHC's integrity. These accusations have been thoroughly refuted in the past – indeed, SAMHSA resurrects a 2008 accusation that is as silly as it is aged – and, more importantly, are irrelevant to the allocation of toll-free numbers.

Though SAMHSA does not explicitly request a comparative analysis, SAMHSA's approach is infected with all of the same problems that the Commission experienced with comparative hearings in the broadcast and spectrum licensing contexts. As the Commission explained in a Report to Congress on Spectrum Auctions:

Comparative hearings were often time consuming and resource intensive from the perspective of both the applicants and the Commission. For example, grants of the initial licenses for cellular service were made based on comparative hearings. The strong demand for this scarce resource resulted in over 200 requests for the first 30 licenses, many of them consisting of well over 1,000 pages of detailed argument and documentation. The next two rounds of licensing attracted 344 and 567 applicants, respectively. The task of evaluating and then awarding the licenses in an informed and equitable manner put a strain on Commission resources. In addition to the cost of evaluating licensees, the opportunity costs caused by delays using this method were high.¹²

Discussing comparative hearings in the broadcast context, the Commission concluded:

The adjudicatory framework used to make this comparative selection can be described most charitably as laborious, exceedingly time consuming, expensive and often results in choices based on, at most, marginal differences.¹³

It was for similar reasons that the Commission chose a first-come, first-served policy for the assignment of toll-free numbers. This system, the Commission rightly concluded,

¹² *FCC Report to Congress on Spectrum Auctions*, 13 FCC Rcd 9601, 9608-09 (1997).

¹³ *Amendment of the Commission's Rules to Allow the Selection from Among Competing Applicants for New AM, FM, and Television Stations By Random Selection*, Notice of Proposed Rulemaking, 4 FCC Rcd 2256, 2257 (1989).

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“will ensure an orderly allocation of toll free vanity numbers [and] would avoid the need to resolve competing claims among subscribers to assignment of particular numbers.”¹⁴ Yet that resolution of competing claims among subscribers is precisely what SAMHSA asks the Commission to do here. The only difference is that SAMHSA asks the Commission to make that judgment based on a standard about which it has no expertise (or jurisdiction) – whether KBHC can safely and reliably operate suicide hotlines.

As KBHC explained in its comments on the remand, any entity asking the Commission to depart from its first-come, first-served policy must be held to a high standard to justify such an action.¹⁵ On remand, SAMHSA has not offered a legally sustainable standard for departing from the first-come, first-served policy. It no longer claims an imminent risk to public safety. It no longer claims an imminent risk that the hotlines would be disconnected if operated by KBHC. It no longer claims that KBHC lacks the financial resources to pay the hotline’s telephone bills. Instead, it has asked the Commission to judge how well KBHC might promote suicide prevention if it were the operator of the hotlines. This theme continues and is amplified in the SAMHSA letter, which repeatedly asserts that KBHC cannot “safely and reliably” operate suicide prevention hotlines. What SAMHSA doesn’t do, however, is demonstrate how the Commission is permitted or able to make this determination. The Commission has no expertise in the field of mental health services. If, as Commissioner McDowell stated in his dissent, the Commission is not equipped to judge a toll-free subscriber’s financial health, it has even fewer capabilities to evaluate the “safe” or “reliable” provision of suicide prevention services. Although SAMHSA continues to dress the claim up in the purported objective of promoting the safety of life, Congress did not entrust the FCC with the responsibility to ensure suicide prevention services. The Commission should reject SAMHSA’s invitation to deviate from the Communications Act in this way.

Similarly, SAMHSA’s repeated invitations to judge whether it may “entrust[] these suicide prevention hotlines to [KBHC]” are both unlawful and unwise.¹⁶ At its most extreme, SAMHSA argues that KBHC is “unreliable and untrustworthy.” KBHC strenuously objects to this accusation and wishes to make clear in no uncertain terms that SAMHSA’s allegation is false. KBHC, and Mr. Butler in particular, have done more for suicide prevention in the past 12 years than perhaps any private individual or organization anywhere. KBHC’s actions were funded principally by the proceeds of his late wife’s insurance and settlement payments, which he used to tie together the hundreds of small local organizations providing suicide

¹⁴ *Toll Free Service Access Codes*, Fourth Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 9058, 9068 (1998).

¹⁵ KBHC Remand Comments at 8.

¹⁶ See SAMHSA letter at 12 (“SAMHSA has grave concerns about entrusting these suicide prevention hotlines to such an entity”).

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prevention hotlines using a single national easily-recognizable telephone number. KBHC was the first entity to see the need for this service, and it has received numerous awards and accolades for the services it provides. Additionally, Mr. Butler has been called on repeatedly to address suicide prevention conferences, often as the keynote speaker or as conference Chairman. In 1999, the City of San Francisco honored KBHC for creating "Reason to Live Day." In 2000, Governor Glendening of Maryland honored KBHC and Reese Butler for their efforts in preventing suicide by creating the SUICIDE hotlines. In 2001, Mr. Butler was the keynote speaker at the Contact USA 34th Annual Conference and the Tennessee Third Annual Suicide Prevention conference, and also co-chaired the Virginia Suicide Prevention Conference. Over the next two years, Mr. Butler gave the keynote address at the Tennessee Fifth Annual Suicide Prevention Conference and was honored by Governor Bush at the Florida State Capitol. To assert that he or the organization is unreliable and untrustworthy is highly offensive to Mr. Butler and his legacy of work in this area.

But, most importantly, SAMHSA's allegation has no grounding in the Communications Act or the Commission's toll-free assignment rules. Prospective toll-free subscribers do not have to pass reliability tests; no agency administers lie-detector examinations to toll-free subscribers. No reasonable interpretation of the Commission's authority under section 52.111 authorizes the Commission to determine the "reliability" or "trustworthiness" of toll-free subscribers as a predicate for the assignment of a toll-free number. Any purported evaluation of a toll-free subscriber's character as a condition of obtaining toll-free service is unlawful.

In sum, acceptance of SAMHSA's invitation to conduct a comparative analysis – or to conduct an assessment of KBHC's ability to "safely and reliably" operate a toll free number – places the Commission in the untenable position of making judgments about the provision of mental health services. The Commission lacks the expertise to conduct this analysis, lacks the jurisdiction to promote or ensure the provision of mental health services, and is ill-equipped to deal with the Pandora's box of competing service claims for toll-free numbers that would result from such an endeavor. Nevertheless, so as not to inadvertently create the impression that the allegations have merit, KBHC responds briefly to the allegations below:

- 800-SUICIDA. KBHC thoroughly explained the circumstances surrounding this error in letters dated March 8, March 17, April 25 and May 10. These letters explain that the situation was unique to 800-SUICIDA because KBHC was not the subscriber of record for that number and that, in any event,

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that KBHC has implemented reasonable measures that ensure the situation cannot recur.¹⁷

- Settlement Discussions. KBHC responded to this silly distraction on December 10, 2008, including a declaration from KBHC's board chair, Pope M. Simmons. The letter and declaration fully explain KBHC's attempts to discuss settlement with the Department of Health and Human Services, the parent agency to SAMHSA, and to negotiate a resolution indirectly through various members of Congress. KBHC considers the matter closed.
- KBHC Website. KBHC responded to allegations of misleading statements on its website on June 2, 2011. KBHC respectfully refers the Commission to that letter for more information.
- Other allegations. Most of the alleged "misrepresentations" fail to provide any detail or support for the claims.¹⁸ Others appear to rely upon statements alleged to be made well prior to the temporary reassignment in this case.¹⁹ KBHC is unable to respond further to these unsupported allegations, other than to state that at no time did KBHC personnel spread information known to be false or make representations that were not based in fact or on evidence believed in good faith to be true. KBHC denies spreading any misinformation or making false allegations. The Commission should ignore SAMHSA's hearsay allegations of unspecified misrepresentations or "rumors and falsehoods."

SAMHSA has had months to present a legally supportable rationale for deviating from the FCC's long-standing policy for toll-free number assignment. It has failed to do so, and instead continues to urge the Commission to depart from its mission and to dabble in mental health policy. The Commission must reject these unlawful invitations. KBHC urges the Commission to return the toll-free numbers to KBHC promptly.

¹⁷ SAMHSA is wrong when it asserts that the quality assurance program is not active. See SAMHSA letter at 7. As KBHC reported over a month ago, the program was successfully launched on May 2, and remains in place today. See May 10 *ex parte* at 2.

¹⁸ See Timothy Jansen, WC Docket 07-271 (February 8, 2011); Mark Kluppe, WC Docket 07-271 (February 14, 2011).

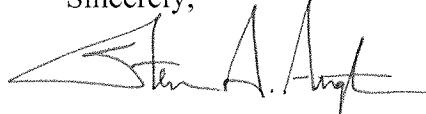
¹⁹ See Heidi Bryan, WC Docket 07-271 (February 17, 2011) (referring to actions "previous to the decision to temporarily award 1-800-SUICIDE to SAMHSA").

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Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven A. Augustino". The signature is stylized with a large initial "S" and a prominent "A".

Steven A. Augustino

cc: Lisa Gelb
Ann Stevens
Heather Hendrickson
Michelle Schlater